

Susan Mengert

Highly Confidential
Newark, NJ

October 5, 2004

20 (Pages 74 to 77)

<p style="text-align: right;">74</p> <p>1 handle them manually.</p> <p>2 Q. Was this -- you mentioned earlier</p> <p>3 that the AWP-10% formula was implemented in</p> <p>4 1999, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Was this E-mail chain before or</p> <p>7 after that was implemented?</p> <p>8 A. This is after.</p> <p>9 Q. This E-mail starts with, "For</p> <p>10 Managed Care, Sue loaded AWP-10%." The Sue</p> <p>11 referred to there is you, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And Mr. Cogen continues, "I'm not</p> <p>14 sure, however, if that was 98 AWP or 99 AWP."</p> <p>15 What is he referring to there?</p> <p>16 A. He's asking at this time what did</p> <p>17 we load for the reimbursement for the oncology</p> <p>18 drugs.</p> <p>19 Q. And by '98 or '99 AWP he's</p> <p>20 referring to the fact that the AWP's for some of</p> <p>21 the drugs being discussed may have changed</p> <p>22 between 1998 and 1999?</p>	<p style="text-align: right;">76</p> <p>1 because of unsatisfactory reimbursement."</p> <p>2 So Horizon certainly recognized as</p> <p>3 of 1999 that if the reimbursement to providers</p> <p>4 offices was inadequate, providers would stop</p> <p>5 administering the drugs. Is that correct?</p> <p>6 MS. LIGHTNER: Objection to form.</p> <p>7 You can answer.</p> <p>8 A. I don't know how the reimbursement,</p> <p>9 how they were reimbursed, because there was no</p> <p>10 reimbursement on the claim engines. So it was</p> <p>11 up to the -- to reimburse the drugs, the</p> <p>12 methodology, I wouldn't know what it was.</p> <p>13 Q. What do you mean, there was no</p> <p>14 reimbursement?</p> <p>15 A. For these oncology drugs, we didn't</p> <p>16 have reimbursement rates for these. Claims</p> <p>17 were pending to Ray Cogen's department and they</p> <p>18 were pricing them.</p> <p>19 Q. Well, let me understand then. If</p> <p>20 prior to this time Horizon had determined on a</p> <p>21 reimbursement methodology of AWP-10%, why was</p> <p>22 it not reimbursing in relation to oncology</p>
<p style="text-align: right;">75</p> <p>1 A. He's referring to files we received</p> <p>2 from Micronetics for AWP.</p> <p>3 Q. What is Micronetics?</p> <p>4 A. Micronetics is the company that we</p> <p>5 purchased the Red Book AWP allowances from.</p> <p>6 Q. So he's referring to the</p> <p>7 possibility that the Red Book, that the AWP's</p> <p>8 purchased by Red Book will have changed by 1998</p> <p>9 and 1999?</p> <p>10 A. He's referring to those sources.</p> <p>11 Q. He then continues, "A number of</p> <p>12 oncologists are complaining that we are</p> <p>13 reimbursing them at a rate below their cost, as</p> <p>14 Marie's E-mail notes."</p> <p>15 Do you know what E-mail he's</p> <p>16 referring to there?</p> <p>17 A. I don't know.</p> <p>18 Q. Then he says, "Tomorrow I am</p> <p>19 meeting with a Dr. Woo who does a lot of</p> <p>20 oncology in the north to discuss this issue.</p> <p>21 He has already begun referring his chemo cases</p> <p>22 to the outpatient departments of hospitals</p>	<p style="text-align: right;">77</p> <p>1 drugs?</p> <p>2 A. Prior to this time?</p> <p>3 Q. Yeah.</p> <p>4 A. Prior to this time, it wasn't in</p> <p>5 the claim engines.</p> <p>6 Q. Let's back up. As I understood</p> <p>7 your testimony, the decision to move to AWP-10%</p> <p>8 had been made before this E-mail chain was</p> <p>9 generated, correct?</p> <p>10 A. Just two months before.</p> <p>11 Q. So it had not yet been</p> <p>12 implemented. Is that correct?</p> <p>13 A. It was implemented as of this</p> <p>14 E-mail, yes.</p> <p>15 Q. But it had not yet been implemented</p> <p>16 for oncology drugs?</p> <p>17 A. Well, the problem stemmed in 1998,</p> <p>18 and that's when the work group was created</p> <p>19 because of the oncology providers who were not</p> <p>20 satisfied with our reimbursement.</p> <p>21 Q. And on what basis were they being</p> <p>22 reimbursed in 1998?</p>

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21 (Pages 78 to 81)

<p>78</p> <p>1 A. The reimbursement allowances were</p> <p>2 not being handled by my department, the pricing</p> <p>3 department. They were being handled by</p> <p>4 utilization management who were taking the</p> <p>5 claims that were pending for pricing and</p> <p>6 reimbursing them based on their methodology,</p> <p>7 which I do not know what that was.</p> <p>8 Q. So you know that prior to this</p> <p>9 E-mail oncologists were complaining about their</p> <p>10 reimbursement rate from Horizon, but you don't</p> <p>11 know what that reimbursement rate was?</p> <p>12 A. I do not.</p> <p>13 Q. But you do understand from Mr.</p> <p>14 Cogen's E-mail that if doctors' providers</p> <p>15 considered the reimbursement rate to be</p> <p>16 unsatisfactory, they would refer their</p> <p>17 chemotherapy cases certainly to hospital</p> <p>18 outpatient department instead, correct?</p> <p>19 A. That's correct.</p> <p>20 Q. And sticking with page 397, you'll</p> <p>21 see a sentence reading, that's on the second</p> <p>22 line, "This is a big issue since our hospital</p>	<p>80</p> <p>1 A. Yes.</p> <p>2 MR. MACORETTA: Objection to form.</p> <p>3 Q. The E-mail continues, "It's hard to</p> <p>4 believe that doctors would refer these cases to</p> <p>5 the hospital if there was any margin from</p> <p>6 delivering the service in the office. That</p> <p>7 would be irrational if we are underpaying in</p> <p>8 the office and causing doctors to refer to the</p> <p>9 hospital. Because of that we are cutting off</p> <p>10 our noses," et cetera, et cetera, et cetera.</p> <p>11 What do you understand Mr. Cogen to</p> <p>12 mean by saying, "we are cutting off our noses"?</p> <p>13 A. Reimbursement for a professional in</p> <p>14 his office is much, is less harmful to</p> <p>15 Horizon's bottom line than if he has to be</p> <p>16 referred to a hospital and incur all the</p> <p>17 charges from the hospital.</p> <p>18 Q. And Mr. Cogen says in this E-mail</p> <p>19 that doctors would not be referring the cases</p> <p>20 to hospitals if there was a margin from</p> <p>21 delivering the service in their offices,</p> <p>22 correct?</p>
<p>79</p> <p>1 outpatient discount off charges methodology</p> <p>2 results in total payments far in excess of what</p> <p>3 we pay in the office."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. So certainly as of 1999 Horizon</p> <p>7 recognized that it would pay more for drugs if</p> <p>8 they were administered in hospitals' outpatient</p> <p>9 departments versus providers' offices, correct?</p> <p>10 MS. LIGHTNER: Object to form.</p> <p>11 MR. MACORETTA: Objection to form.</p> <p>12 MS. LIGHTNER: You can answer.</p> <p>13 Q. Is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know whether Horizon</p> <p>16 recognized that fact at any time prior to 1999,</p> <p>17 the date of this E-mail?</p> <p>18 A. I'm sure there were people here at</p> <p>19 Horizon that did know that, yes.</p> <p>20 Q. Would it be fair to say that</p> <p>21 Horizon has been aware of that fact, say, back</p> <p>22 to 1990?</p>	<p>81</p> <p>1 A. That's correct.</p> <p>2 Q. So you understand Mr. Cogen to be</p> <p>3 saying here that providers should be afforded a</p> <p>4 margin for administration in their offices, so</p> <p>5 that they won't refer patients to the hospital</p> <p>6 outpatient department, correct?</p> <p>7 A. I see that, yes.</p> <p>8 Q. Now, going back to page 396. You</p> <p>9 responded to Mr. Cogen's E-mail saying,</p> <p>10 "Effective 1/1/99 we moved to the</p> <p>11 reimbursement rate of 1998's Mean of AWP-10%,"</p> <p>12 and you provided some figures.</p> <p>13 What do you mean by, "We moved the</p> <p>14 reimbursement rate of 1998's Mean of AWP"?</p> <p>15 A. We received a file from Micronetics</p> <p>16 for the average wholesale price. And since we</p> <p>17 don't have the capabilities in our claim</p> <p>18 engines to reimburse by NDC, we then take the</p> <p>19 generic drugs and the brand drugs and we</p> <p>20 develop a Mean of AWP.</p> <p>21 Q. Well, let's start with brand drugs</p> <p>22 there. Let's say a branded drug goes through</p>

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<p style="text-align: right;">82</p> <p>1 two price actions in the course of a given</p> <p>2 year. Does Horizon change the amount it's</p> <p>3 reimbursing at each price change in the course</p> <p>4 of a given year?</p> <p>5 A. Horizon changes as the CPT codes</p> <p>6 changes, not specific to the brand versus</p> <p>7 nonbrand.</p> <p>8 Q. Right. Well, let's only talk about</p> <p>9 brands here. See, I'm trying to understand</p> <p>10 what you mean by Mean of AWP.</p> <p>11 A. Well, the Mean of AWP represents</p> <p>12 the brand and generics, it's everything rolled</p> <p>13 into one. I don't have the NDC code. It would</p> <p>14 allow me to price a generic versus a brand.</p> <p>15 Since I don't have that capability, I only have</p> <p>16 one CPT code for ten NDC codes, I have to come</p> <p>17 up with one reimbursement rate. So it's the</p> <p>18 mean of everything that will roll up to that</p> <p>19 CPT code.</p> <p>20 Q. So if a given drug has generic</p> <p>21 competitors, and say the branded version is</p> <p>22 administered in office, the amount that Horizon</p>	<p style="text-align: right;">84</p> <p>1 A. That's correct.</p> <p>2 Q. Horizon will then reimburse for all</p> <p>3 of the drugs within that CPT at the Mean of the</p> <p>4 AWP of all those drugs minus ten percent?</p> <p>5 A. Yes.</p> <p>6 Q. Has that been the case since 1999?</p> <p>7 A. Yes. Anything that Micronetics</p> <p>8 does not provide, we price at AWP-10%.</p> <p>9 Q. So when Horizon started using AWP</p> <p>10 in 1999, it never used the AWP of specific</p> <p>11 drugs, it always used the Mean of AWP for all</p> <p>12 drugs in the CPT. Is that correct?</p> <p>13 A. We use both. Anything that we're</p> <p>14 using, Red Book, where we have to physically</p> <p>15 look up the codes, we use the AWP-10%.</p> <p>16 Q. Okay.</p> <p>17 A. Micronetics doesn't provide us an</p> <p>18 allowance for every single drug code that's out</p> <p>19 there.</p> <p>20 Q. When would you use the Mean AWP of</p> <p>21 all the drugs in the CPT as against using the</p> <p>22 AWP for an individual drug?</p>
<p style="text-align: right;">83</p> <p>1 reimburses for it, will that be AWP-10% of the</p> <p>2 branded drugs AWP?</p> <p>3 A. It will be the Mean of AWP for the</p> <p>4 CPT code which is inclusive of the brand versus</p> <p>5 nonbrand.</p> <p>6 Q. Is that true across-the-board?</p> <p>7 A. For a professional reimbursement,</p> <p>8 we don't have the capability to reimburse by</p> <p>9 NDC code. We only have reimbursement by CPT.</p> <p>10 Q. So the answer to my question is,</p> <p>11 yes, that is across-the-board?</p> <p>12 A. Yes.</p> <p>13 Q. Does Horizon generate these meaned</p> <p>14 AWP's for each CPT code?</p> <p>15 A. We purchase it from Micronetics.</p> <p>16 Q. So Micronetics will provide a Mean</p> <p>17 of AWP's for all the drugs under a particular</p> <p>18 CPT code and give that to Horizon, correct?</p> <p>19 A. That's correct.</p> <p>20 Q. And that will be the Mean of the</p> <p>21 AWP's of the branded drugs and all the generic</p> <p>22 drugs that are in that CPT, correct?</p>	<p style="text-align: right;">85</p> <p>1 A. We use mean for AWP for all drugs</p> <p>2 provided by Micronetics. Anything Micronetics</p> <p>3 does not supply, we would utilize Red Book.</p> <p>4 Q. Now, for the drugs that Micronetics</p> <p>5 does supply, if a drug has no generic</p> <p>6 competitors but has other branded competitors,</p> <p>7 will Horizon reimburse at the mean AWP of all</p> <p>8 the branded competitors minus ten percent?</p> <p>9 A. Micronetics does the calculation,</p> <p>10 but you'll see in the database that they</p> <p>11 provide to us the competitors and the brand</p> <p>12 versus nonbrand.</p> <p>13 Q. Yeah. Well, I'm talking about a</p> <p>14 situation where there are no branded drugs.</p> <p>15 A. And we're looking the code up in</p> <p>16 the Red Book.</p> <p>17 Q. Well, let me put the question to</p> <p>18 you again. Let's say there are only branded</p> <p>19 competitors in a particular class and there are</p> <p>20 no generic drugs. Can a CPT code include</p> <p>21 different branded drugs, but no generic drugs?</p> <p>22 A. Are you asking me the question is</p>

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<p style="text-align: right;">86</p> <p>1 it something Micronetics is providing to me?</p> <p>2 Q. Well, I'm asking whether you know.</p> <p>3 A. If Micronetics is providing it to</p> <p>4 us, then, yes, it's inclusive of all the</p> <p>5 brands.</p> <p>6 Q. Are there circumstances where a</p> <p>7 Micronetics will provide you with -- well,</p> <p>8 withdraw that.</p> <p>9 Are there circumstances in which</p> <p>10 Horizon will reimburse for branded drugs that</p> <p>11 have no generic competitors using a mean AWP</p> <p>12 for that drug and its other branded</p> <p>13 competitors?</p> <p>14 A. Yes.</p> <p>15 Q. So there are circumstances where a</p> <p>16 drug that has no generic competition will be</p> <p>17 reimbursed not on the basis of its own AWP, but</p> <p>18 on the basis of the Mean of its AWP and its</p> <p>19 competitors?</p> <p>20 A. That's correct.</p> <p>21 Q. Let's go back to what we marked</p> <p>22 earlier as Exhibit 1. That was HRZ 404 to</p>	<p style="text-align: right;">88</p> <p>1 a part of the same CPT code?</p> <p>2 A. They are not.</p> <p>3 Q. So in the specific case of Lupron</p> <p>4 and Zoladex, the Mean of AWP, that would be,</p> <p>5 the basis for reimbursement was not the Mean of</p> <p>6 those two drugs?</p> <p>7 A. That's correct.</p> <p>8 Q. Were there any other drugs that</p> <p>9 were within the same CPT code as Lupron?</p> <p>10 A. There may have been. I do not</p> <p>11 know.</p> <p>12 Q. Do you know whether or not -- well,</p> <p>13 when did Horizon start reimbursing for Lupron</p> <p>14 at the rate of Zoladex?</p> <p>15 A. August 1st, 2001.</p> <p>16 Q. Prior to August 1st of 2001, was</p> <p>17 Horizon reimbursing for Lupron on the basis of</p> <p>18 Lupron's AWP-10%?</p> <p>19 A. Yes.</p> <p>20 Q. And how do you know that -- put it</p> <p>21 another way. How do you know that you were</p> <p>22 reimbursing at Lupron's AWP as against a mean</p>
<p style="text-align: right;">87</p> <p>1 407. Perhaps you can refresh your recollection</p> <p>2 about that document.</p> <p>3 A. I'm fine.</p> <p>4 Q. What's the issue being discussed in</p> <p>5 this E-mail chain?</p> <p>6 A. The Zoladex versus the</p> <p>7 reimbursement that Medicare had derived saying</p> <p>8 that the Zoladex and Lupron were reimbursed,</p> <p>9 should be reimbursed at the exact rate.</p> <p>10 Q. And Horizon subsequently decided to</p> <p>11 track Medicare's least cost alternative</p> <p>12 policies and reimburse Lupron at the same rate</p> <p>13 as Zoladex. Is that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. My question is: Why was that</p> <p>16 necessary, if Horizon was already reimbursing</p> <p>17 at a mean AWP rather than the AWP for Lupron</p> <p>18 alone?</p> <p>19 A. Because the AWP for one or the</p> <p>20 other drug was exorbitant.</p> <p>21 Q. Well, let's get this right. Is it</p> <p>22 your understanding that Lupron and Zoladex are</p>	<p style="text-align: right;">89</p> <p>1 AWP that would have included Lupron and other</p> <p>2 drugs in the same CPT code?</p> <p>3 A. I don't know.</p> <p>4 Q. So when you just said that, yes, in</p> <p>5 response to my question as to whether Lupron</p> <p>6 was being reimbursed on the basis of its own</p> <p>7 AWP, that was incorrect?</p> <p>8 A. Yes.</p> <p>9 Q. So you so you don't know whether</p> <p>10 prior to 2001 Horizon was reimbursing Lupron</p> <p>11 based on its AWP or not. Is that correct?</p> <p>12 A. I do not know if there were other</p> <p>13 competitors that were all up to that CPT code</p> <p>14 other than -- I don't know if there's more than</p> <p>15 one manufacturer.</p> <p>16 Q. If there's more than one</p> <p>17 manufacturer?</p> <p>18 A. If there's competitors that roll up</p> <p>19 to this CPT code.</p> <p>20 Q. But if there were other competitors</p> <p>21 that rolled up to that CPT code, then Lupron</p> <p>22 would have been reimbursed not on the basis of</p>

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<p style="text-align: right;">90</p> <p>1 its own AWP, but on the Mean AWP of all of the</p> <p>2 drugs?</p> <p>3 A. That's correct.</p> <p>4 MS. LIGHTNER: Are you okay? Want</p> <p>5 to take a break or anything.</p> <p>6 THE WITNESS: No.</p> <p>7 MS. LIGHTNER: Okay.</p> <p>8 Q. Let's say I wanted to go to a</p> <p>9 particular drug. And if I can figure out</p> <p>10 whether Horizon has reimbursed for that drug</p> <p>11 based on its own AWP or based on a mean AWP,</p> <p>12 how would I determine that?</p> <p>13 A. Could you rephrase that.</p> <p>14 Q. Sure. Let's take the example of,</p> <p>15 you know, any specific drug, and I want to know</p> <p>16 whether, at any given point in time, let's say</p> <p>17 in 1999, that drug was being reimbursed by</p> <p>18 reference to its own AWP or by reference to a</p> <p>19 mean AWP that included that and other drugs.</p> <p>20 How do I determine which of those was true for</p> <p>21 any given drug?</p> <p>22 A. We would have all the files in our</p>	<p style="text-align: right;">92</p> <p>1 chain, which is at HRZ 396, marked as Exhibit</p> <p>2 2, I believe. And I'd like you to go there to</p> <p>3 the top E-mail. That's an E-mail from Terry</p> <p>4 Leach, correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And who is Terry Leach?</p> <p>7 A. He was the Director of Pharmacy.</p> <p>8 Q. And that was his position in 1999?</p> <p>9 A. Yes.</p> <p>10 Q. That's a position that's not held</p> <p>11 by Margaret Johnson. Is that correct?</p> <p>12 A. It is.</p> <p>13 Q. And, by the way, while we're on</p> <p>14 that topic, what is Raymond Cogen's title, or</p> <p>15 what was it '99?</p> <p>16 A. He was the Medical Director for</p> <p>17 Managed Care products.</p> <p>18 Q. Is he still with the company?</p> <p>19 A. He's not.</p> <p>20 Q. And these other people who are on</p> <p>21 the cc list of your E-mail, are they all also</p> <p>22 all medical directors?</p>
<p style="text-align: right;">91</p> <p>1 department housed in our department.</p> <p>2 Q. And those -- what do those files</p> <p>3 consist of?</p> <p>4 A. They're the Micronetics tapes that</p> <p>5 are passed to us.</p> <p>6 Q. And those would reveal for which</p> <p>7 drugs Micronetics had provided a Mean AWP and</p> <p>8 for which drugs it hadn't, correct?</p> <p>9 A. That's correct.</p> <p>10 Q. And for drugs in relation to which</p> <p>11 Micronetics does not provide a Mean AWP,</p> <p>12 Horizon reimburses based on the Red Book AWP of</p> <p>13 that drug itself, correct?</p> <p>14 A. That's correct.</p> <p>15 Q. So the only way to determine</p> <p>16 whether Horizon is reimbursing based on the AWP</p> <p>17 of a drug itself or a mean of all the drugs in</p> <p>18 a particular class, is to look at those</p> <p>19 Micronetics' files that Horizon maintains,</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. Now let's stick to that same E-mail</p>	<p style="text-align: right;">93</p> <p>1 A. Marie Hatam, Nicholas Bonvicino and</p> <p>2 Stephen Gordin are all medical directors.</p> <p>3 Q. And what are the other people?</p> <p>4 A. Donna Celestini is the VP. John</p> <p>5 Sweeney is the Director of Finance. David</p> <p>6 Quillen, he was provider rep.</p> <p>7 Q. So let's go up to the top E-mail</p> <p>8 there. Can you review Mr. Leach's E-mail,</p> <p>9 please, and just let me know when you're</p> <p>10 ready.</p> <p>11 A. Yes, I'm ready.</p> <p>12 Q. The second sentence says, "The</p> <p>13 physician may purchase the oncology drugs from</p> <p>14 HomeCall currently." Are you familiar with</p> <p>15 HomeCall?</p> <p>16 A. I am not.</p> <p>17 Q. The E-mail continues, "and will</p> <p>18 soon be able to purchase from the major</p> <p>19 oncology providers through us."</p> <p>20 Do you know what Mr. Leach was</p> <p>21 referring to there?</p> <p>22 A. I do not know.</p>

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<p style="text-align: right;">94</p> <p>1 Q. Was there ever a situation in which</p> <p>2 Horizon itself purchased drugs and then</p> <p>3 provided those to providers?</p> <p>4 A. I'm not privy to that information.</p> <p>5 Q. It continues, "Physicians are</p> <p>6 likely to be upset because they have been</p> <p>7 making a tremendous amount of money off</p> <p>8 chemotherapy for many, many years."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. When he says, "physicians are</p> <p>12 likely to be upset," what is he referring to</p> <p>13 there?</p> <p>14 MS. LIGHTNER: Objection. Calls</p> <p>15 for speculation.</p> <p>16 Q. Is there something in this E-mail</p> <p>17 chain that he's referring to when he says,</p> <p>18 "physicians will be upset"?</p> <p>19 A. I do not know.</p> <p>20 Q. Okay.</p> <p>21 A. I don't know the content.</p> <p>22 Q. Certainly, as of the date of this</p>	<p style="text-align: right;">96</p> <p>1 a typo when he says, "we have not set it up"?</p> <p>2 MR. MACORETTA: Objection.</p> <p>3 A. I'm not familiar with what he's</p> <p>4 referring to.</p> <p>5 Q. Well, he sent this E-mail to you,</p> <p>6 correct, cc'd to a few other people?</p> <p>7 A. He sent it to me, but he's talking</p> <p>8 to everybody else on the E-mail.</p> <p>9 Q. Well, what's your understanding of</p> <p>10 what he was saying to you in this E-mail?</p> <p>11 A. Probably just the first sentence,</p> <p>12 that we're reimbursing appropriately a Mean of</p> <p>13 AWP-10%.</p> <p>14 Q. You understood that appropriate</p> <p>15 rate included some margin to the physicians,</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. So when Mr. Leach says in this</p> <p>19 sentence, "we have not set it up that they can</p> <p>20 receive some financial benefit between their</p> <p>21 purchase price and our reimbursement," does</p> <p>22 that make sense?</p>
<p style="text-align: right;">95</p> <p>1 E-mail in 1999, we can see that Mr. Leach was</p> <p>2 aware that physicians have been making</p> <p>3 tremendous amount of money off chemotherapy for</p> <p>4 many, many years, correct?</p> <p>5 A. That's true.</p> <p>6 Q. Was Horizon aware of that fact</p> <p>7 prior to 1999?</p> <p>8 A. I'm not aware of the fact.</p> <p>9 Q. So you don't know when Horizon</p> <p>10 first became aware of that fact?</p> <p>11 A. I do not know.</p> <p>12 Q. Horizon certainly was aware prior</p> <p>13 to 1999 that physicians are making some margin</p> <p>14 on the drugs, correct?</p> <p>15 A. Yes.</p> <p>16 MS. LIGHTNER: Object to form.</p> <p>17 Q. Now, Mr. Leach's E-mail continues,</p> <p>18 "We have not set it up that they can receive</p> <p>19 some financial benefit between their purchase</p> <p>20 price and our reimbursement. I think this is</p> <p>21 very fair."</p> <p>22 Now, do you know whether -- is that</p>	<p style="text-align: right;">97</p> <p>1 MR. MACORETTA: Objection.</p> <p>2 MS. LIGHTNER: Same objection.</p> <p>3 A. Me reading it today?</p> <p>4 Q. Does it make sense to you?</p> <p>5 A. Today, I'm referring it to</p> <p>6 HomeCall, but I have no idea what this E-mail</p> <p>7 is about.</p> <p>8 Q. So if he was saying here that</p> <p>9 Horizon has not set it up so providers can make</p> <p>10 a margin, you would understand that to be</p> <p>11 incorrect, right?</p> <p>12 MS. LIGHTNER: Objection.</p> <p>13 A. I have no knowledge of this E-mail.</p> <p>14 Q. Well, leaving aside this E-mail,</p> <p>15 you just testified that you understood</p> <p>16 providers were making a margin on drugs</p> <p>17 administered in office --</p> <p>18 MR. MACORETTA: Objection.</p> <p>19 Q. -- prior to 1999, correct?</p> <p>20 A. That's right.</p> <p>21 Q. Has Horizon ever engaged in any</p> <p>22 studies addressing the relative costs to</p>

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26 (Pages 98 to 101)

<p style="text-align: right;">98</p> <p>1 Horizon of drugs when they're administered in 2 physicians' offices versus hospital outpatient 3 departments? 4 A. I'm not aware of it. 5 Q. You're not aware if any such 6 studies or analyses have taken place? 7 MR. MACORETTA: Objection. 8 A. No. 9 MR. MANGI: Why don't we take a 10 quick break. Off the record. 11 (A recess is taken at 12:00 p.m.) 12 Q. Ms. Mengert, before the break, we 13 discussed the fact that in August of 2001 14 Horizon started reimbursing for Lupron by 15 reference to the AWP for Zoladex, correct? 16 A. Yes. 17 Q. Did Horizon, at that time, adopt 18 similar policies in relation to any other 19 drugs? 20 A. Not that I'm aware. 21 Q. Has Horizon ever adopted similar 22 policies in relation to any other drugs?</p>	<p style="text-align: right;">100</p> <p>1 the pharmacy side at Horizon are aware of such 2 contracts? 3 MS. LIGHTNER: Objection. Go 4 ahead. 5 A. I don't know. 6 Q. Let's turn to another document. 7 We'll mark this as Mengert Exhibit 3. And this 8 is a document Bates numbered H5 to H29. 9 (Exhibit Mengert 003 is marked.) 10 Q. Feel free to take a look at that. 11 I'm going to have a very simple question about 12 it. Are you familiar with this document? 13 A. I've seen it, yes. 14 Q. This appears to be a template of an 15 agreement between Medigroup of New Jersey and a 16 physician, correct? 17 A. Yes. 18 Q. What is Medigroup of New Jersey? 19 A. Medigroup was Horizon Healthcare's 20 Managed Care name. 21 MR. MACORETTA: Could you read it 22 back.</p>
<p style="text-align: right;">99</p> <p>1 A. No, not that I'm aware. 2 Q. Do you know whether Horizon has 3 ever considered adopting these in relation to 4 other drugs? 5 A. I don't know. 6 Q. But if Horizon did elect to adopt 7 similar policies in relation to others, it 8 could do so, correct? 9 A. Yes. 10 Q. And, indeed, Horizon could have 11 done so at any time, correct? 12 A. That's correct. 13 Q. And that would be true certainly 14 back to 1990, correct? 15 A. Yes. 16 Q. Do you know whether or not drug 17 manufacturers contract with hospitals? 18 A. I don't know. 19 Q. Do you know whether or not drug 20 manufacturers' contract with providers? 21 A. I don't know. 22 Q. Are you aware that individuals on</p>	<p style="text-align: right;">101</p> <p>1 (The answer is read back by the 2 court reporter: 3 "ANSWER: Medigroup was Horizon 4 Healthcare's Managed Care name." 5 Q. What are the circumstances in which 6 you've seen this contract before? 7 A. I don't recall. 8 Q. Do you review such contracts on a 9 regular basis? 10 A. No. 11 Q. I'd like to turn your attention to 12 the page Bates numbered H 13, which is page 13 nine of the document. The third paragraph down 14 starts with, "You may qualify for a bonus." 15 Do you see that? 16 A. Yes. 17 Q. That sentence says, "You may 18 qualify for a bonus based on inclusion in 19 Medigroup's Physician Performance Incentive 20 Plan." 21 Do you know what the Physician 22 Performance Incentive Plan was?</p>

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27 (Pages 102 to 105)

<p style="text-align: right;">102</p> <p>1 MS. LIGHTNER: I'm going to state</p> <p>2 my objection now, that this is going a little</p> <p>3 beyond the scope of the subpoena. I'll give</p> <p>4 you a little leeway, but it's beyond the scope.</p> <p>5 Q. I appreciate that.</p> <p>6 A. For the PCPs, they had a Physician</p> <p>7 Performance Incentive Plan if they performed</p> <p>8 within the criteria that Horizon had set with</p> <p>9 their providers.</p> <p>10 Q. And the criteria pertained to</p> <p>11 controlling costs. Is that correct?</p> <p>12 A. That was one of the criterias, yes.</p> <p>13 Q. What were the other criteria?</p> <p>14 A. Membership panel. This doesn't</p> <p>15 pertain to the professional reimbursement</p> <p>16 department, so I don't have a lot of knowledge.</p> <p>17 Q. Well, were drug costs part of the</p> <p>18 cost control element?</p> <p>19 A. I don't know.</p> <p>20 Q. Do you know whether or not</p> <p>21 providers could qualify for the Physician</p> <p>22 Performance Incentive by prescribing some drugs</p>	<p style="text-align: right;">104</p> <p>1 (Exhibit Mengert 004 is marked.)</p> <p>2 Q. Let's take a look at that and let</p> <p>3 me know when you're done.</p> <p>4 A. Yes.</p> <p>5 Q. Now, as I understood your earlier</p> <p>6 testimony, prior to 1999, reimbursement for</p> <p>7 drugs was not tied to AWP. Is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. Now, if you have a look at this</p> <p>10 contract, this is a Home Infusion Therapy</p> <p>11 Provider Agreement, dated February 1st, 1994.</p> <p>12 And that's between Horizon and a provider of</p> <p>13 Home Infusion Therapy Services, right?</p> <p>14 A. Yes.</p> <p>15 Q. Now, I'd like you to turn to page</p> <p>16 HRZ 1673.</p> <p>17 A. Yes.</p> <p>18 Q. Now, it appears that here</p> <p>19 reimbursement is tied to AWP. Is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. Do you have an understanding as to</p> <p>22 what sort of arrangement this contract</p>
<p style="text-align: right;">103</p> <p>1 over others?</p> <p>2 A. I don't know.</p> <p>3 Q. Who was in charge of the Physician</p> <p>4 Performance Incentive Plan?</p> <p>5 A. The Director of Provider Affairs.</p> <p>6 Q. And what is that person's name?</p> <p>7 A. Ann Sylvestro.</p> <p>8 Q. Is the Physician Performance</p> <p>9 Incentive Plan still in place?</p> <p>10 A. I don't know.</p> <p>11 Q. Do you know when that plan started?</p> <p>12 A. I don't know.</p> <p>13 Q. Do you know whether or not that</p> <p>14 plan was in place as of 1990?</p> <p>15 A. I don't know.</p> <p>16 Q. Do you know whether the plan is</p> <p>17 offered to all providers?</p> <p>18 A. I don't know.</p> <p>19 Q. I'm done with that document. Thank</p> <p>20 you. I'll show you an another document, which,</p> <p>21 if you'll mark as Mengert Exhibit 4. And this</p> <p>22 is Bates numbers HRZ 1664 to 1674.</p>	<p style="text-align: right;">105</p> <p>1 pertained?</p> <p>2 A. No.</p> <p>3 Q. Okay.</p> <p>4 A. It did not come through my</p> <p>5 department.</p> <p>6 Q. So is it fair to say that prior to</p> <p>7 1999 there were some instance in which</p> <p>8 reimbursement did include an AWP based element?</p> <p>9 A. Yes.</p> <p>10 Q. I'd like to show you another</p> <p>11 document, please. Just mark that as Mengert</p> <p>12 Exhibit 5. This is Bates numbers HRZ 393 to</p> <p>13 395?</p> <p>14 (Exhibit Mengert 005 is marked.)</p> <p>15 Q. Now, this is an E-mail exchange</p> <p>16 between you and John Sweeney with a number of</p> <p>17 other people copied on the E-mails, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. Just want to be clear again. Did</p> <p>20 you look at the center E-mail on 393 that</p> <p>21 starts with, "I don't have any issue," below</p> <p>22 that is your name?</p>

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<p style="text-align: right;">106</p> <p>1 A. Yes.</p> <p>2 Q. But your name actually refers to</p> <p>3 the E-mail below that, correct?</p> <p>4 A. That's correct.</p> <p>5 Q. And that E-mail that starts with,</p> <p>6 "I don't have any issue" from John Sweeney?</p> <p>7 A. That's correct.</p> <p>8 Q. Now, this attachment which is at</p> <p>9 395, that's something that was attached to your</p> <p>10 E-mail which is at the bottom of 393, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And this is a document that you</p> <p>13 generated?</p> <p>14 A. Yes.</p> <p>15 Q. Okay.</p> <p>16 A. It appears so.</p> <p>17 Q. Now, this is from 1998, so this is</p> <p>18 before Horizon started using AWP as a basis for</p> <p>19 reimbursement or AWP-10%, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Now, can you describe to me what</p> <p>22 you were trying to show in this attachment,</p>	<p style="text-align: right;">108</p> <p>1 what is that referring to?</p> <p>2 A. Means there was an allowance in the</p> <p>3 system, for example, for 90700 for \$32.80. I</p> <p>4 didn't know what the source was.</p> <p>5 Q. So that's the amount that was being</p> <p>6 reimbursed to providers between 1994 and 1998</p> <p>7 for drugs under that CPT code, correct?</p> <p>8 A. That's correct.</p> <p>9 Q. Did that include an administration</p> <p>10 fee?</p> <p>11 A. Not that I'm aware of, no.</p> <p>12 Q. So between '94 and '98 for CPT</p> <p>13 90700, the total amount reimbursed to providers</p> <p>14 was the 32.80 figure, right?</p> <p>15 A. That's correct.</p> <p>16 Q. Then there's the RBRVS figure, with</p> <p>17 a 10/1/98 date. Now, as of the date of this</p> <p>18 E-mail, was the amount that was being</p> <p>19 reimbursed still that, from the unknown source?</p> <p>20 A. No, it doesn't appear so.</p> <p>21 Q. So what was being reimbursed on the</p> <p>22 date of this E-mail?</p>
<p style="text-align: right;">107</p> <p>1 which is at 395?</p> <p>2 A. There was a need to -- there were</p> <p>3 complaints regarding our admin allowances,</p> <p>4 which had not changed since 1/1 of '94. David</p> <p>5 Benditch (phn), one of our medical directors,</p> <p>6 recommended a \$5 admin fee, which he proposed</p> <p>7 to Nick Bonvicino and Steve O'Cormick, the</p> <p>8 other medical doctors at Horizon.</p> <p>9 Q. So as of 1998, at this time period</p> <p>10 Horizon recognized that the admin fees they</p> <p>11 were paying to providers were insufficient. Is</p> <p>12 that correct?</p> <p>13 A. That's correct.</p> <p>14 MS. LIGHTNER: Object to form.</p> <p>15 Q. Looking again at the table that's</p> <p>16 at 395, can you describe for me what these</p> <p>17 various columns are. First of all, the first</p> <p>18 two columns have a caption, "Loaded to HSII."</p> <p>19 Do you see that? It's right up here.</p> <p>20 A. "Loaded to HSII" is our claim</p> <p>21 engine. HSII was a claim engine.</p> <p>22 Q. And "Unknown Source" from 1/1/94,</p>	<p style="text-align: right;">109</p> <p>1 A. RBRVS 10/1/98.</p> <p>2 Q. So as of 10/1/98, the amount that</p> <p>3 Horizon was reimbursing moved from the earlier</p> <p>4 32.80 figure, in this particular example, to</p> <p>5 the RBRVS figure of 29. Is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. Was there any administration fee</p> <p>8 that was being paid in addition to that \$29</p> <p>9 figure?</p> <p>10 A. I don't know if there was a</p> <p>11 separate CPT code that represented the admin.</p> <p>12 Q. Then your next column is the</p> <p>13 proposed addition of a \$5 admin fee?</p> <p>14 A. Yes.</p> <p>15 Q. Now, you just referred to a</p> <p>16 separate code for the admin fee?</p> <p>17 A. Yes.</p> <p>18 Q. How would that interplay with the</p> <p>19 addition of a \$5 admin fee to this CPT?</p> <p>20 A. If there was a separate CPT code</p> <p>21 that the provider could bill under, he would</p> <p>22 get that reimbursement in addition to the</p>

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<p style="text-align: right;">110</p> <p>1 actual drug.</p> <p>2 Q. And here you were proposing adding</p> <p>3 a \$5 admin fee to the amount reimbursed for the</p> <p>4 drug itself, correct?</p> <p>5 A. Yes.</p> <p>6 Q. So if there was a separate code for</p> <p>7 administration, the physician would get both</p> <p>8 that amount, plus this admin fee of \$5, plus</p> <p>9 the RBRVS amount. Is that correct?</p> <p>10 A. That's correct.</p> <p>11 Q. Then along to the right you have</p> <p>12 the two columns with the heading, "average</p> <p>13 wholesale price." Why did you include those</p> <p>14 columns in the spreadsheet?</p> <p>15 A. I can't say today why. I don't</p> <p>16 know.</p> <p>17 Q. Okay.</p> <p>18 A. Just comparison purposes.</p> <p>19 MR. MACORETTA: I'm sorry. I</p> <p>20 couldn't hear any of that answer.</p> <p>21 A. I don't know the answer. I don't</p> <p>22 know why the AWP was on there, with the</p>	<p style="text-align: right;">112</p> <p>1 A. Yes.</p> <p>2 Q. And this would, in fact,</p> <p>3 demonstrate why, when the next year you</p> <p>4 switched to an AWP-based formula, that actually</p> <p>5 saved Horizon a substantial sum of money. Is</p> <p>6 that right?</p> <p>7 A. That's correct.</p> <p>8 Q. Now, if we turn to page 393, HRZ</p> <p>9 393?</p> <p>10 A. Yes.</p> <p>11 Q. I'd like to draw your attention</p> <p>12 first to the bottom E-mail, which is from you</p> <p>13 to Nick Bonvicino.</p> <p>14 A. Yes.</p> <p>15 Q. The first paragraph of that it says</p> <p>16 towards the middle of it, "Prior to the</p> <p>17 implementation of the 10/1/98 RBRVS fees,</p> <p>18 immunization codes had not been updated since</p> <p>19 1/1/94. Attached to the cost of the</p> <p>20 immunization was a \$15 administrative fee."</p> <p>21 A. Yes.</p> <p>22 Q. In the next paragraph it says, "We</p>
<p style="text-align: right;">111</p> <p>1 exception it would be for comparison purposes</p> <p>2 to allow Horizon to know where they stand with</p> <p>3 AWP.</p> <p>4 Q. You see there are two columns</p> <p>5 there, mean for all product and median for all</p> <p>6 products?</p> <p>7 A. Yes.</p> <p>8 Q. Do you understand the distinction</p> <p>9 between those two?</p> <p>10 A. Yes.</p> <p>11 Q. What is the distinction between</p> <p>12 those two?</p> <p>13 A. The information that we purchased</p> <p>14 from Micronetics has a mean, median, as well as</p> <p>15 the actual cost by drug or by brand or</p> <p>16 nonbrand. And what I wanted to show the folks</p> <p>17 apparently is what it was for the mean or</p> <p>18 medium on your averages.</p> <p>19 Q. And you'll see here in almost all</p> <p>20 of these example the mean of all products under</p> <p>21 average wholesale price is lower than the RBRVS</p> <p>22 figure. Is that correct?</p>	<p style="text-align: right;">113</p> <p>1 would like to establish an overall</p> <p>2 administrative fee," and the proposed fee there</p> <p>3 is \$5.</p> <p>4 Now, was the administrative fee</p> <p>5 being offered being reduced?</p> <p>6 A. I don't know at this time.</p> <p>7 Q. Well, this is an E-mail that you</p> <p>8 sent out, correct?</p> <p>9 A. Yes.</p> <p>10 Q. So were you communicating here that</p> <p>11 prior to 1998 there was a \$15 administrative</p> <p>12 fee paid in addition to the amount reimbursed?</p> <p>13 A. I don't know what the admin fee was</p> <p>14 prior to 1998.</p> <p>15 Q. Well, what do you understand this</p> <p>16 reference to mean, "attached to the costs of</p> <p>17 the immunization was a \$15 administrative fee"?</p> <p>18 A. I don't know.</p> <p>19 Q. Well, you testified earlier that</p> <p>20 this E-mail chain was in relation to providing</p> <p>21 additional, increasing administrative fees,</p> <p>22 correct?</p>

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<p style="text-align: right;">114</p> <p>1 A. Well, increasing the reimbursement 2 for the drug with an additional. The chart was 3 to take the cost of the drug and add an 4 additional \$5 to it. 5 Q. So is it your testimony that you 6 don't know whether administrative fees were 7 increased or decreased? 8 A. I don't know here in 2004 if there 9 were admin fees at this time. 10 Q. You mean prior to 1998? 11 A. I don't know if Medicare had 12 specific CPT codes for admin. I don't know 13 when they published them. 14 Q. The E-mail that's above, which is 15 from John Sweeney, says, "I don't have an issue 16 with the \$5 admin fee." 17 Then he asks you, "Are we also 18 looking at moving to AWP or AWP less ten 19 percent." 20 Did that prestage the change that 21 was made the following year to AWP-10%? 22 A. Yes.</p>	<p style="text-align: right;">116</p> <p>1 Q. You say, "My issue at this moment 2 is to get an admin fee attached to the 10/1/98 3 RBRVS fees which are already loaded on the 4 system." 5 So it's fair to say that your focus 6 here was to insure that the reimbursement was 7 increased with the \$5 administration fee being 8 added to the RBRVS, correct? 9 MS. LIGHTNER: Objection to form. 10 MR. MACORETTA: Objection to form. 11 A. Yes. 12 Q. Then you say, "Out of 24 CPT codes, 13 the physicians are only complaining about two, 14 Flu and Cholera. Reason being, these are the 15 only two codes that decreased when moving to 16 RBRVS." 17 A. That's correct. 18 Q. So you understood here that the way 19 to compensate physicians for a decrease from 20 the, in the amount that was being reimbursed 21 for the drug itself was to provide a higher 22 admin fee. Is that correct?</p>
<p style="text-align: right;">115</p> <p>1 Q. To your knowledge, is this the 2 first time that the possibility of that 3 transition was addressed? 4 A. No. 5 Q. When is the first time that you 6 recall that transition being addressed? 7 A. I was only involved in the 8 discussion of ADP at the end of 1998. However, 9 there was a work group that consisted of Ray 10 Cogen and the utilization department discussing 11 moving to AWP. 12 Q. When was that work group set up? 13 A. In 1998, I believe. 14 Q. You understand that to have been 15 prior to December of '98, which is when this 16 E-mail was sent? 17 A. Yes. 18 Q. Now, on the top E-mail, which is 19 from you, I'd like to draw your attention to 20 the paragraph starting with, "My issue at this 21 moment --" 22 A. Yes.</p>	<p style="text-align: right;">117</p> <p>1 MS. LIGHTNER: Object to form. 2 MR. MACORETTA: Objection to form. 3 A. Yes. 4 Q. Indeed, the opposite of that would 5 also be true, wouldn't it, that physicians who 6 have inadequate administration fees could 7 compensate them by increasing the drug 8 reimbursement amount. Is that correct? 9 MS. LIGHTNER: Object to form. 10 MR. MACORETTA: Objection to form. 11 A. We could increase the drug 12 reimbursement, yes. 13 Q. We referred earlier to the change 14 that was made in relation to the reimbursement 15 for Lupron. Do you recall that testimony? 16 A. Yes. 17 Q. And the reimbursement for Lupron 18 was then tied to Zoladex, correct? 19 A. Yes. 20 Q. Did that change result in any 21 communications with providers regarding that 22 reimbursement?</p>

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31 (Pages 118 to 121)

<p style="text-align: right;">118</p> <p>1 A. I don't know.</p> <p>2 MR. MACORETTA: Objection.</p> <p>3 MR. MANGI: Let's mark another</p> <p>4 document, please.</p> <p>5 (Exhibit Mengert 006 is marked.)</p> <p>6 Q. That's Mengert Exhibit 6. Take a</p> <p>7 look at that and let me know when you're done.</p> <p>8 This is Bates numbered HRZ 519 to 524. I'll</p> <p>9 note that the copy we received on the CD</p> <p>10 appeared to be missing 523.</p> <p>11 Familiarize yourself with that</p> <p>12 document and let me know when you're done,</p> <p>13 please.</p> <p>14 A. Okay.</p> <p>15 Q. Now, as I mentioned, we</p> <p>16 unfortunately are missing a page from the</p> <p>17 production, but if I turn your attention to HRZ</p> <p>18 522.</p> <p>19 A. Yes.</p> <p>20 Q. Now, this is a Complaint from a</p> <p>21 doctor to the New Jersey Division of Insurance</p> <p>22 regarding Horizon, correct?</p>	<p style="text-align: right;">120</p> <p>1 A. Yes.</p> <p>2 Q. And in that paragraph, Horizon is</p> <p>3 communicating to the doctor the fact that it</p> <p>4 had tied reimbursement for Lupron to Zoladex</p> <p>5 and had communicated the same already, correct?</p> <p>6 A. Yes.</p> <p>7 Q. In the following paragraph, this</p> <p>8 letter to the doctor from Horizon says, "As</p> <p>9 discussed, we have identified a provider</p> <p>10 HomeCall Rx that offers physicians a 17%</p> <p>11 discount from the AWP."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And Horizon then provides contact</p> <p>15 information for HomeCall Rx to the provider,</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. So Horizon here was telling a</p> <p>19 provider that the provider could acquire the</p> <p>20 drug at 17% below AWP, correct?</p> <p>21 A. Yes.</p> <p>22 MR. MACORETTA: Object to form.</p>
<p style="text-align: right;">119</p> <p>1 A. Yes.</p> <p>2 Q. At the bottom of page 522, the</p> <p>3 doctor appears to be complaining about the</p> <p>4 reimbursement for Lupron having been reduced,</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. And based on the time frame he's</p> <p>8 referring to, the change in reimbursement he's</p> <p>9 complaining about was Horizon's decision to</p> <p>10 reimburse for Lupron by reference to AWP of</p> <p>11 Zoladex minus ten percent, correct?</p> <p>12 MR. MACORETTA: Objection to form.</p> <p>13 A. Yes.</p> <p>14 Q. Now, turning to page 519. This is</p> <p>15 a response from Horizon to the doctor, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Are you involved at all in these</p> <p>18 sorts of communications with physicians?</p> <p>19 A. No.</p> <p>20 Q. You'll see towards the bottom of</p> <p>21 page 519, there's a paragraph starting with,</p> <p>22 "We noted your concern"?</p>	<p style="text-align: right;">121</p> <p>1 MS. LIGHTNER: Objection to form.</p> <p>2 Q. And, indeed, Horizon was providing</p> <p>3 contact information for where the provider</p> <p>4 could purchase the drug at that rate, correct?</p> <p>5 A. Yes.</p> <p>6 Q. So although you testified earlier</p> <p>7 that you yourself don't know the rates at which</p> <p>8 providers can acquire drugs, there are</p> <p>9 certainly others at Horizon who are aware of</p> <p>10 that, correct?</p> <p>11 A. Yes.</p> <p>12 MR. MACORETTA: Objection to form.</p> <p>13 Q. As reflected in this letter?</p> <p>14 A. Yes.</p> <p>15 MR. MACORETTA: Objection.</p> <p>16 MR. MANGI: What's the basis?</p> <p>17 MR. MACORETTA: Argumentative.</p> <p>18 Misstates her prior testimony.</p> <p>19 MR. MANGI: Well, she agreed with</p> <p>20 it.</p> <p>21 Q. Now, I'd like to show you another</p> <p>22 document. This was, in fact, marked at</p>

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32 (Pages 122 to 125)

<p style="text-align: right;">122</p> <p>1 Ms. Johnson's deposition, but for clarify let's 2 just mark it again. 3 (Exhibit Mengert 007 is marked.) 4 Q. This is Mengert Exhibit 7. This 5 bears Bates numbers H00102 to H00141. I'm 6 going to draw your attention to a specific part 7 of this document. You can certainly look at it 8 further, if you please. 9 MS. LIGHTNER: Just so that the 10 record is clear, this document is confidential 11 to Horizon, so I'm going to limit the witness 12 to only looking at the provision that you -- 13 she can look at the front page to see what it 14 is. 15 MR. MANGI: I only intend to ask 16 her a specific about question about it. 17 MS. LIGHTNER: But I'm going to 18 limit the witness to the specific provision 19 that you intend to question her on. 20 MR. MACORETTA: What are the Bates 21 numbers? 22 MR. MANGI: It's H104 -- no, I'm</p>	<p style="text-align: right;">124</p> <p>1 entered into in 1998, correct? 2 A. Yes. 3 Q. And you see it's an agreement 4 between Horizon and a PBM, right? 5 A. Yes. 6 Q. I'd like to turn your attention to 7 page H126. 8 A. Yes. 9 Q. You see a number four on the 10 heading, "specialty drug claims"? 11 A. Yes. 12 Q. Can you review that paragraph and 13 let me know when you're done, please. 14 A. Yes. 15 Q. This provides for a particular 16 payment rate from Horizon to the PBM in 17 relation to specialty drugs, correct? 18 A. Yes. 19 Q. And it provides those payments will 20 be on a cost pass-through basis. Do you see 21 that? 22 A. Yes.</p>
<p style="text-align: right;">123</p> <p>1 sorry, actually, they're a bit different. 2 MS. LIGHTNER: It's H102 to H141. 3 What page are you referring the witness to? 4 Q. Let's just start with page 104. 5 Are you familiar with the term pharmacy 6 benefits management? 7 A. No. 8 Q. Are you familiar with the acronym 9 PBM? 10 A. Yes. 11 Q. You understand this to be a 12 contract between Horizon and one of its PBMs 13 dated 1998, correct? 14 A. No. 15 Q. If you look at page H104 right at 16 the top paragraph starting with, "This 17 agreement is entered into"? 18 A. Yes. 19 Q. When you have a look at that 20 paragraph, let me know when you're done. 21 A. Yes. 22 Q. So you see this is an agreement</p>	<p style="text-align: right;">125</p> <p>1 Q. What's your understanding of that 2 provision? 3 A. I don't have an understanding. 4 Q. Are you familiar with the term, 5 "specialty drugs"? 6 A. Yes. 7 Q. What's your understanding of that 8 term? 9 A. They're drugs that we are going to 10 reimburse through special, through a specialty 11 pharmacy. 12 Q. Does Horizon currently reimburse 13 for drugs to a specialty pharmacy? 14 A. They may. I don't know. 15 Q. You don't know? 16 A. I don't know. 17 Q. Do you know whether Horizon was 18 ever reimbursed for any drugs through a 19 specialty pharmacy? 20 A. I don't know. 21 Q. Let me turn to your attention to 22 page H136 that contains the "Schedule G"</p>

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<p style="text-align: right;">126</p> <p>1 referred to at page 126, which is a list of 2 specialty drugs? 3 A. Yes. 4 Q. Do you have any knowledge as to the 5 basis on which these drugs were selected for 6 this list? 7 A. I do not know. 8 Q. And flipping back then to page 9 H126. 10 A. Yes. 11 Q. You'll see four lines down in the 12 paragraph the sentence starting with, "Upon 13 request from Horizon." It's four lines down in 14 the paragraph. 15 A. Okay. 16 Q. "Upon request from Horizon." 17 So it says, "The PBM and Horizon 18 will jointly negotiate with suppliers in 19 respect of specialty drug products." 20 Do you have any knowledge as to 21 whether or not that ever occurred? 22 A. No, I don't have knowledge.</p>	<p style="text-align: right;">128</p> <p>1 When your counsel is done, could 2 you please take a look at that. 3 MS. LIGHTNER: This has no Bates 4 number on it. 5 MR. MANGI: That document was not 6 produced by Horizon. 7 MS. LIGHTNER: Oh, okay. Oh, I 8 know what this is. 9 MR. MANGI: I'm sorry. If I could 10 just have it for a moment. 11 John, this is a document entitled, 12 "Survey of Health Plans Concerning Physician 13 Fees and Payment Methodology, A study conducted 14 by Dyckman & Associates for the Medicare 15 Payment Advisory Commission." 16 Take a look at that document. Feel 17 free to look a through it, but I'll have a 18 specific question pertaining mainly to the 19 study itself. 20 Have you ever seen -- withdraw 21 that. 22 Are you familiar with this</p>
<p style="text-align: right;">127</p> <p>1 Q. Do you know whether or not Horizon 2 uses a different reimbursement methodology for 3 which it would refer to as specialty drugs? 4 A. For a profession? 5 Q. Right. 6 A. I don't. 7 Q. You testified earlier that you 8 didn't know whether or not Horizon utilizes 9 specialty pharmacies. Is that correct? 10 A. Right. 11 Q. Your testimony is that, even if 12 Horizon were to use specialty pharmacies, it 13 would still reimburse physicians based on the 14 same methodology? 15 A. From my professional reimbursement, 16 these drugs are also priced in my area, so I 17 don't have a differential reimbursement for 18 them. 19 Q. I'll show you another document 20 that's also been previously marked, but if 21 you'll mark it again. 22 (Exhibit Mengert 008 is marked.)</p>	<p style="text-align: right;">129</p> <p>1 document? 2 A. I've never received the document. 3 Q. Have you heard of this document? 4 A. Yes. 5 Q. In what context have you heard of 6 this document? 7 A. We contracted with Dyckman to take 8 a look at our reimbursement methodology versus 9 our competitors and supply Horizon information 10 where we could improve. 11 Q. Is it your understanding that this 12 report was generated in response to that 13 request from Horizon? 14 A. We participated in this study. 15 Q. Who was the principal point of 16 contact at Horizon in relation to this study? 17 A. I don't know. 18 Q. How did you come to hear about this 19 study taking place? 20 A. I provided Dyckman our 21 reimbursement allowances for the CPT codes in 22 question.</p>

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<p style="text-align: right;">130</p> <p>1 Q. So you communicated that</p> <p>2 reimbursement by Horizon was at the Mean AWP of</p> <p>3 all drugs and the CPT code minus ten percent.</p> <p>4 Is that correct?</p> <p>5 A. I did not provide that.</p> <p>6 Q. What did you provide?</p> <p>7 A. It wasn't just for drugs. It was</p> <p>8 for all CPT codes. They didn't ask questions</p> <p>9 on how we reimbursed.</p> <p>10 Q. Well, let's break it down. When</p> <p>11 were you first contacted in relation to this</p> <p>12 study?</p> <p>13 A. I don't recall.</p> <p>14 Q. Do you recall who contacted you?</p> <p>15 A. Yes. Mary Garcia, director under</p> <p>16 Donna Celestini.</p> <p>17 Q. What directions did you receive</p> <p>18 from Ms. Mary Garcia?</p> <p>19 A. That they were looking for our</p> <p>20 reimbursement allowances for our Managed Care</p> <p>21 in traditional products in New Jersey for a</p> <p>22 specific time period.</p>	<p style="text-align: right;">132</p> <p>1 A. CPT modifier and fee.</p> <p>2 Q. What was in the modifier column?</p> <p>3 A. It would denote the modifier for</p> <p>4 the CPT. So it would be the full professional</p> <p>5 technical rental.</p> <p>6 Q. So that's a code that related to</p> <p>7 the CPT?</p> <p>8 A. Yes.</p> <p>9 Q. And the fee column, what did</p> <p>10 that --</p> <p>11 A. That's our allowance. That's one</p> <p>12 of the claim engines.</p> <p>13 Q. So that was an actual dollar</p> <p>14 amount?</p> <p>15 A. Yes.</p> <p>16 Q. Now, the CPT codes that you</p> <p>17 provided in this table, did those, were those</p> <p>18 codes that pertained to procedures, or were</p> <p>19 they codes that pertained to drugs?</p> <p>20 A. Both.</p> <p>21 Q. So there were some codes that</p> <p>22 pertained to specific drugs, and then there</p>
<p style="text-align: right;">131</p> <p>1 Q. And what did you understand that to</p> <p>2 mean, reimbursement allowances?</p> <p>3 A. Our allowances that we reimburse.</p> <p>4 Q. So you understood that to mean the</p> <p>5 actual dollar amounts that were being</p> <p>6 reimbursed?</p> <p>7 A. Yes.</p> <p>8 Q. And what information did you</p> <p>9 communicate then to the authors of that study?</p> <p>10 A. I provided them what they</p> <p>11 requested.</p> <p>12 Q. Did you provide them with a table?</p> <p>13 A. Yes.</p> <p>14 Q. Did you provide them with anything</p> <p>15 other than a table?</p> <p>16 A. No.</p> <p>17 Q. Do you recall what the columns were</p> <p>18 in that table?</p> <p>19 A. It would have been CPT modifier and</p> <p>20 fee.</p> <p>21 MR. MACORETTA: If you could speak</p> <p>22 up.</p>	<p style="text-align: right;">133</p> <p>1 were other codes that pertained to specific</p> <p>2 procedures, correct?</p> <p>3 A. That's correct.</p> <p>4 Q. And in relation to the codes that</p> <p>5 pertained to drugs, the fee amount that was</p> <p>6 listed was a flat dollar sum. Is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. And that dollar sum was the AWP off</p> <p>9 -- I'm sorry, the Mean AWP of all the drugs in</p> <p>10 that CPT code minus ten percent, correct?</p> <p>11 A. That's correct, or AWP-10%.</p> <p>12 Q. Right. Depending on whether or not</p> <p>13 the vendor had supplied you with a mean for the</p> <p>14 CPT codes for that particular code, correct?</p> <p>15 A. Yes.</p> <p>16 Q. But the table that you provided did</p> <p>17 not explain which it was, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. So in some cases it may have been</p> <p>20 the AWP of a specific drug minus ten percent,</p> <p>21 if it was the only drug or the CPT or drug that</p> <p>22 was not included in the information from the</p>

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<p>134</p> <p>1 vendor, correct?</p> <p>2 A. Yes.</p> <p>3 Q. And in other cases that \$5 sum</p> <p>4 would have been the Mean of the AWP's of all the</p> <p>5 drugs under a particular CPT code minus ten</p> <p>6 percent, correct?</p> <p>7 A. Yes.</p> <p>8 Q. But that information was not</p> <p>9 communicated in the table. All the table had</p> <p>10 were flat dollar sums pertaining to CPT codes?</p> <p>11 A. Yes.</p> <p>12 Q. How did you communicate that</p> <p>13 information to the authors of the Dyckman</p> <p>14 study?</p> <p>15 A. The information was communicated to</p> <p>16 Dyckman through Drew Thraen, who's the director</p> <p>17 under my boss John Sweeney. And they collected</p> <p>18 the information and passed it to Dyckman.</p> <p>19 Q. So you provided that table to</p> <p>20 Mr. Thraen?</p> <p>21 A. Yes.</p> <p>22 Q. Do you still maintain a copy of</p>	<p>136</p> <p>1 Q. In electronic form?</p> <p>2 A. Yes.</p> <p>3 MR. MACORETTA: I'm having a lot of</p> <p>4 trouble hearing you. If you could just speak</p> <p>5 up.</p> <p>6 A. We passed them our utilization.</p> <p>7 Q. Do you know whether Horizon ever</p> <p>8 communicated to Dyckman its reimbursement</p> <p>9 methodology?</p> <p>10 A. I don't recall.</p> <p>11 Q. Are you familiar what major drug</p> <p>12 wholesalers operate in the market today?</p> <p>13 A. I'm sorry?</p> <p>14 Q. Are you familiar with the major</p> <p>15 drug wholesalers operating in the market today?</p> <p>16 A. No.</p> <p>17 Q. Do you have any knowledge regarding</p> <p>18 the price at which wholesalers purchase drugs</p> <p>19 from manufacturers?</p> <p>20 A. No.</p> <p>21 Q. Do you have an understanding as to</p> <p>22 whether or not the price at which wholesalers</p>
<p>135</p> <p>1 that table in your files?</p> <p>2 A. Yes.</p> <p>3 Q. Were there any associated documents</p> <p>4 or was it just a table?</p> <p>5 A. That I supplied?</p> <p>6 Q. Right.</p> <p>7 A. It was just the tables.</p> <p>8 Q. Do you know whether Horizon</p> <p>9 provided anything to Dyckman other than the</p> <p>10 tables that you put together?</p> <p>11 A. Horizon supplied many things to</p> <p>12 Dyckman.</p> <p>13 Q. What other information did Horizon</p> <p>14 supply to Dyckman?</p> <p>15 A. They supplied them our claim</p> <p>16 information.</p> <p>17 Q. Okay.</p> <p>18 A. And that's all I'm aware of that</p> <p>19 Horizon supplied.</p> <p>20 Q. By claim information, are you</p> <p>21 referring to transaction specific claims data?</p> <p>22 A. Yes.</p>	<p>137</p> <p>1 purchase drugs from manufacturers is tied to</p> <p>2 wholesale acquisition costs?</p> <p>3 A. No.</p> <p>4 Q. To the best of your knowledge, has</p> <p>5 Horizon been involved in any litigations</p> <p>6 pertaining to AWP other than this one?</p> <p>7 A. I'm not aware.</p> <p>8 Q. Do you know whether or not Horizon</p> <p>9 has been involved in a litigation with the</p> <p>10 caption in Ray Lupron marketing and sales</p> <p>11 practices in litigation?</p> <p>12 A. I'm not aware.</p> <p>13 MR. MANGI: If we can take another</p> <p>14 quick break. I'm just going to use the men's</p> <p>15 room.</p> <p>16 MS. LIGHTNER: Just so you know,</p> <p>17 this room turns into a pumpkin again at two</p> <p>18 o'clock, so we would have to move. So if you</p> <p>19 have --</p> <p>20 MR. MANGI: I'll be done very</p> <p>21 promptly after the break.</p> <p>22 MS. LIGHTNER: Because I know</p>

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<p style="text-align: right;">138</p> <p>1 plaintiff's counsel may have questions, too.</p> <p>2 MR. MACORETTA: I don't think it</p> <p>3 will be a problem.</p> <p>4 MS. LIGHTNER: Okay.</p> <p>5 MR. MANGI: So let's take five</p> <p>6 minutes.</p> <p>7 (Recess is taken.)</p> <p>8 MR. MANGI: John, are you with us?</p> <p>9 MR. MACORETTA: Yeah, I'm here.</p> <p>10 Q. Back on the record.</p> <p>11 Now, you testified earlier that</p> <p>12 Horizon's current reimbursement methodology to</p> <p>13 providers, which is Mean of AWP-10% or AWP-10%</p> <p>14 was first adopted in 1999, correct?</p> <p>15 A. Yes, for Managed Care products.</p> <p>16 Q. Right. The individuals who were</p> <p>17 responsible for making that decision are those</p> <p>18 who are listed on the E-mail we discussed</p> <p>19 earlier. Is that correct?</p> <p>20 A. That's correct.</p> <p>21 Q. Do you know whether any documents</p> <p>22 were generated or analyses as a part of that</p>	<p style="text-align: right;">140</p> <p>1 explanation on a reimbursement methodology.</p> <p>2 Q. And the current methodology applies</p> <p>3 across-the-board to generic drugs and branded</p> <p>4 drugs, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Any other factors that went into</p> <p>7 that decision?</p> <p>8 A. No.</p> <p>9 Q. Prior to that time 1999, Horizon</p> <p>10 was using the RBRVS as a basis for</p> <p>11 reimbursement to providers, correct?</p> <p>12 A. Yes.</p> <p>13 Q. When did Horizon start using the</p> <p>14 RBRVS as a basis for reimbursing providers?</p> <p>15 A. 1996.</p> <p>16 Q. What was Horizon using prior to</p> <p>17 1996?</p> <p>18 A. Some form of Medicare.</p> <p>19 MR. MACORETTA: I'm sorry. I</p> <p>20 didn't hear your answer.</p> <p>21 A. A form of Medicare.</p> <p>22 Q. What do you mean by a form of</p>
<p style="text-align: right;">139</p> <p>1 transition?</p> <p>2 A. I don't recall.</p> <p>3 Q. Other than the savings of costs, do</p> <p>4 you know of any other factors that went into</p> <p>5 that decision?</p> <p>6 A. I don't.</p> <p>7 Q. Do you have an understanding as to</p> <p>8 why Horizon decided to use the mean of all the</p> <p>9 AWP's of drugs in a particular CPT minus ten</p> <p>10 percent as opposed to the AWP's of specific</p> <p>11 drugs minus ten percent?</p> <p>12 A. It would be easier to explain to</p> <p>13 the provider community that we have taken all</p> <p>14 of the generic versus brand into consideration</p> <p>15 versus just pricing on brand, generic, which</p> <p>16 would be a lower reimbursement rate, versus the</p> <p>17 brand, which is a higher reimbursement rate.</p> <p>18 Q. What do you mean, it would be</p> <p>19 easier to communicate to providers?</p> <p>20 A. You need to communicate to the</p> <p>21 provider. When they ask how you're</p> <p>22 reimbursing, you need to provide a good</p>	<p style="text-align: right;">141</p> <p>1 Medicare?</p> <p>2 A. I believe the Managed Care products</p> <p>3 was reimbursing at 110% of Medicare prior to</p> <p>4 1996.</p> <p>5 Q. And was that the case all the way</p> <p>6 back to 1990?</p> <p>7 A. I don't know what the methodology</p> <p>8 was prior to 1990, back to 1990.</p> <p>9 Q. What was the basis for the decision</p> <p>10 to move from that Medicare related</p> <p>11 reimbursement to RBRVS in 1996?</p> <p>12 A. RBRVS has a methodology to gap fill</p> <p>13 the codes that are not filled by Medicare which</p> <p>14 Horizon needs for their reimbursement.</p> <p>15 Q. So RBRVS enabled Horizon to process</p> <p>16 claims in relation to more drugs than had been</p> <p>17 the case previously. Is that correct?</p> <p>18 MS. LIGHTNER: Object to form.</p> <p>19 MR. MACORETTA: Objection.</p> <p>20 A. RBRVS gaps fills all procedures</p> <p>21 that Medicare is not reimbursing for not</p> <p>22 specific to drugs.</p>

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37 (Pages 142 to 145)

<p>142</p> <p>1 Q. Well, let's focus specifically on</p> <p>2 reimbursement for drugs. What's your</p> <p>3 understanding of the reimbursement methodology</p> <p>4 that Horizon used in relation to drugs</p> <p>5 specifically, prior to 1996?</p> <p>6 A. They were at 110% of Medicare.</p> <p>7 Q. When the change was made to RBRVS</p> <p>8 in 1996, did the amount that Horizon was</p> <p>9 reimbursing for drugs increase or decrease?</p> <p>10 A. It decreased because they dropped</p> <p>11 their percentage from 110 down to, I believe,</p> <p>12 105.</p> <p>13 Q. Were you involved in that change?</p> <p>14 A. No.</p> <p>15 Q. Do you know who was involved with</p> <p>16 that change?</p> <p>17 A. No.</p> <p>18 Q. On what do you base your knowledge</p> <p>19 regarding that change in 1996?</p> <p>20 A. The information I have at my hands.</p> <p>21 Q. Is that information that's been</p> <p>22 communicated to you by other people?</p>	<p>144</p> <p>1 questions for the witness?</p> <p>2 MR. MACORETTA: I do.</p> <p>3 MR. MANGI: Fire away.</p> <p>4 EXAMINATION</p> <p>5 BY MR. MACORETTA:</p> <p>6 Q. Ms. Mengert, good afternoon.</p> <p>7 A. Hello.</p> <p>8 Q. I introduced myself. I'm John</p> <p>9 Macoretta here on behalf of the plaintiffs.</p> <p>10 Just a few minutes worth of questions for you.</p> <p>11 I think a minute ago you said prior to '96</p> <p>12 Horizon was reimbursing for drugs at 110% of</p> <p>13 Medicare, right?</p> <p>14 A. Yes.</p> <p>15 Q. I'm sorry, I didn't hear your</p> <p>16 answer.</p> <p>17 A. Yes.</p> <p>18 Q. I still didn't hear.</p> <p>19 MR. MANGI: She said, yes.</p> <p>20 MR. MACORETTA: Could you move the</p> <p>21 phone.</p> <p>22 MS. LIGHTNER: She's right on top</p>
<p>143</p> <p>1 A. It's documentation, yes.</p> <p>2 Q. Is that documentation that's</p> <p>3 maintained in your files?</p> <p>4 A. Yes.</p> <p>5 Q. What kind of documentation are you</p> <p>6 referring to?</p> <p>7 A. It's either E-mails or project</p> <p>8 notes, that type of thing.</p> <p>9 MR. MANGI: Now, Counsel, at this</p> <p>10 point, we can put an oral stipulation on the</p> <p>11 record regarding the documents that have been</p> <p>12 produced by Horizon pursuant to subpoena. I'll</p> <p>13 read for the record that the documents that</p> <p>14 have been produced bear Bates numbers HRZ 1 to</p> <p>15 HRZ 8469 and H1 to H231.</p> <p>16 I'd like to ask counsel to</p> <p>17 stipulate on the record that these are</p> <p>18 authentic copies of documents produced from</p> <p>19 Horizon's files and they're business records</p> <p>20 within the meaning of the Rules of Evidence.</p> <p>21 MS. LIGHTNER: That's correct.</p> <p>22 MR. MANGI: John, do you have any</p>	<p>145</p> <p>1 of it. Maybe we'll take a second because there</p> <p>2 may be feedback between the feedback. So take</p> <p>3 a second before you answer the question.</p> <p>4 Q. So your answer to that question was</p> <p>5 yes?</p> <p>6 A. Yes.</p> <p>7 Q. Do you have an understanding of how</p> <p>8 Medicare was calculating its reimbursement</p> <p>9 amount prior to '96?</p> <p>10 A. No, I don't.</p> <p>11 Q. Do you know whether or not Medicare</p> <p>12 was using AWP as a basis for its reimbursement?</p> <p>13 A. I don't know that.</p> <p>14 Q. When you say Medicare, are we</p> <p>15 talking about Medicare part B or part A?</p> <p>16 A. Medicare part B.</p> <p>17 Q. And the RBRVS system, do you know</p> <p>18 how drug costs or drug reimbursement amount is</p> <p>19 calculated under that?</p> <p>20 A. Do I know?</p> <p>21 MR. MANGI: Object to the form.</p> <p>22 A. Do I know what RVUs are associated</p>

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<p style="text-align: right;">146</p> <p>1 with it?</p> <p>2 Q. Under the -- I'm not sure -- I'm</p> <p>3 not. No, let me try it this way. Under the</p> <p>4 RBRVS system for certain drugs, the doctor pays</p> <p>5 a set amount, right?</p> <p>6 A. Yes, once we calculate the</p> <p>7 reimbursement rate.</p> <p>8 Q. And how is that amount calculated?</p> <p>9 A. Every CPT code has a work practice</p> <p>10 and malpractice adjustment to it. The RVUs are</p> <p>11 applied an overall conversion factor for that</p> <p>12 particular year.</p> <p>13 Q. I think a minute ago you said when</p> <p>14 you switched to RBRVS it caused your drug</p> <p>15 reimbursement to drop to 105% of Medicare. Is</p> <p>16 that right?</p> <p>17 A. I believe we -- in 1996, I believe</p> <p>18 our Managed Care products moved from 110% of</p> <p>19 RBRVS, 110% of Medicare to 105% of RBRVS.</p> <p>20 Q. Oh, okay. I heard. And that</p> <p>21 caused a reduction in your overall drug costs?</p> <p>22 A. That's correct.</p>	<p style="text-align: right;">148</p> <p>1 MS. LIGHTNER: What do you mean by</p> <p>2 you? Do you mean her, or do you mean Horizon?</p> <p>3 MR. MACORETTA: I mean Horizon.</p> <p>4 MS. LIGHTNER: Okay.</p> <p>5 A. Horizon could, as long as they have</p> <p>6 all the information. I don't know if the</p> <p>7 information is archived, is what I'm saying.</p> <p>8 Q. Well, I presume you have some kind</p> <p>9 of written document retention policy over there</p> <p>10 at Horizon, right?</p> <p>11 A. I don't know. That's out of my</p> <p>12 realm.</p> <p>13 Q. If you could take a look at Exhibit</p> <p>14 5 again, which is the 12/7/98 E-mail.</p> <p>15 A. Yes.</p> <p>16 Q. And I'm interested in the bottom</p> <p>17 E-mail on the first page, the paragraph that</p> <p>18 says, "Going forward, we would like to</p> <p>19 establish an overall administrative fee that we</p> <p>20 can apply to the immunizations."</p> <p>21 Do you see that sentence?</p> <p>22 A. Yes.</p>
<p style="text-align: right;">147</p> <p>1 Q. And I want to talk to you for a</p> <p>2 second about the claims or payment data that</p> <p>3 Horizon has. For the various drugs that</p> <p>4 Horizon paid for, do you have claims data</p> <p>5 telling you the specific amount you would have</p> <p>6 paid for those drugs going back some period?</p> <p>7 A. Would you restate that.</p> <p>8 Q. Sure.</p> <p>9 Do you have somewhere at Horizon</p> <p>10 data that would tell you how much you paid for</p> <p>11 specific drugs over some period of time?</p> <p>12 A. Yes.</p> <p>13 Q. How far back does that data go?</p> <p>14 A. I'm not -- I do not know that</p> <p>15 information. It would be up to our claim</p> <p>16 engines how much they would house the</p> <p>17 information.</p> <p>18 Q. But if you wanted to go seek data</p> <p>19 for, say, Zoladex, could you go somewhere in</p> <p>20 the computer system and see a listing of every</p> <p>21 Zoladex claim you paid and how much you paid</p> <p>22 for it?</p>	<p style="text-align: right;">149</p> <p>1 Q. So am I correct that this series of</p> <p>2 E-mails and the chart attached to it all relate</p> <p>3 to immunization codes?</p> <p>4 A. It appears that way, yes.</p> <p>5 Q. I mean, this discussion of a \$5</p> <p>6 administrative fee versus a ten, a \$15</p> <p>7 administrative fee, didn't apply to all codes,</p> <p>8 right?</p> <p>9 A. It doesn't appear that way.</p> <p>10 Q. Well, do you have some memory as to</p> <p>11 whether or not it applied to all the codes?</p> <p>12 A. No.</p> <p>13 MR. MANGI: I'm sorry. What was</p> <p>14 that? No, you don't have a memory?</p> <p>15 A. No, I don't have any memories. I</p> <p>16 don't recall.</p> <p>17 Q. AWP. Do you have an understanding</p> <p>18 as to what that term means?</p> <p>19 A. Average wholesale price.</p> <p>20 Q. What does that mean? I mean, do</p> <p>21 you understand what, when we say the AWP for a</p> <p>22 drug is X, what does that price represent?</p>

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October 5, 2004

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<p style="text-align: right;">150</p> <p>1 MR. MANGI: Object to the form.</p> <p>2 A. I don't know. I don't know what</p> <p>3 you're trying to get.</p> <p>4 Q. Well, the acronym AWP stands for</p> <p>5 average wholesale price. Is it your</p> <p>6 understanding that average wholesale price in</p> <p>7 that context means the average of the wholesale</p> <p>8 prices charged for that drug?</p> <p>9 MR. MANGI: Object to the form.</p> <p>10 A. Yes.</p> <p>11 Q. All right. Is it your view that</p> <p>12 calculating reimbursement for drugs at some</p> <p>13 discount from AWP is a reasonable way to</p> <p>14 reimburse physicians for drugs?</p> <p>15 A. Yes.</p> <p>16 Q. You believe that AWP is a reliable</p> <p>17 pricing benchmark from which to determine the</p> <p>18 cost of drugs to physicians?</p> <p>19 MR. MANGI: Object to the form.</p> <p>20 A. It's one methodology.</p> <p>21 Q. Well, do you believe it's a</p> <p>22 reasonable methodology?</p>	<p style="text-align: right;">152</p> <p>1 physician was making a substantial amount of</p> <p>2 profit, meaning the amount he was paying was</p> <p>3 substantially less than what you were</p> <p>4 reimbursing him?</p> <p>5 MR. MANGI: Object to the form.</p> <p>6 A. I don't know what Horizon knew or</p> <p>7 didn't know on how much a provider was getting</p> <p>8 overpaid or underpaid.</p> <p>9 MR. MACORETTA: Those are all the</p> <p>10 questions I have.</p> <p>11 MR. MANGI: I have some brief</p> <p>12 follow-up then.</p> <p>13</p> <p>14 EXAMINATION</p> <p>15 BY MR. MANGI:</p> <p>16 Q. Mr. Macoretta asked you about</p> <p>17 whether or not you can express the amount, the</p> <p>18 price at which physicians acquire drugs by</p> <p>19 reference to AWP. And I'd like to draw your</p> <p>20 attention back to a document HRZ 519.</p> <p>21 Perhaps you can help me with the</p> <p>22 exhibit number.</p>
<p style="text-align: right;">151</p> <p>1 A. Up until -- we are currently</p> <p>2 looking to pursue other avenues.</p> <p>3 Q. Fair enough. Okay. Fair enough.</p> <p>4 And when Mr. Mangi was talking to you about the</p> <p>5 profits physicians may make on reimbursement</p> <p>6 for drugs, does Horizon have some understanding</p> <p>7 as to how much profit a physician is going to</p> <p>8 make for the reimbursement of the drug?</p> <p>9 A. I have no knowledge of how much a</p> <p>10 provider would make.</p> <p>11 Q. Well, was it Horizon's -- does</p> <p>12 Horizon intend for a physician to make a</p> <p>13 certain amount of profit when reimbursement?</p> <p>14 MR. MANGI: Object to the form.</p> <p>15 A. I don't know what Horizon's intent</p> <p>16 was.</p> <p>17 Q. But you understood that the amount</p> <p>18 you were reimbursing the physician did not</p> <p>19 exactly equal what he paid for the drug in all</p> <p>20 cases?</p> <p>21 A. That's correct.</p> <p>22 Q. Did Horizon understand that the</p>	<p style="text-align: right;">153</p> <p>1 MS. LIGHTNER: It's Exhibit 6.</p> <p>2 Q. Exhibit 6. And as we discussed in</p> <p>3 relation to that document Horizon here was</p> <p>4 telling providers they could obtain drugs at a</p> <p>5 17% discount of AWP, correct?</p> <p>6 MR. MACORETTA: Objection.</p> <p>7 A. Yes.</p> <p>8 Q. And, indeed, you can look at a</p> <p>9 price either by reference to the list price</p> <p>10 plus or minus a percentage, or an AWP plus or</p> <p>11 minus a percentage, and you can get to any</p> <p>12 price you want, correct?</p> <p>13 A. Yes.</p> <p>14 MR. MACORETTA: Objection.</p> <p>15 Q. Now, Mr. Macoretta also asked you</p> <p>16 about what you understood average wholesale</p> <p>17 price to mean. Now, you're aware that the</p> <p>18 acronym stands for average wholesale price,</p> <p>19 right?</p> <p>20 A. Yes.</p> <p>21 Q. Now, Mr. Macoretta asked you</p> <p>22 whether you understood that to mean the average</p>